

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

CHARLES LAVELLE BAUSLEY

PLAINTIFF

v.

Case No. 6:17-cv-6027

E.W. BULUTION and
WENDY KELLY

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed May 24, 2017, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 10). Judge Bryant recommends that Plaintiff Charles Lavelle Bausley's Motion for Leave to Appeal *In Forma Pauperis*¹ (ECF No. 9) be denied because Plaintiff has accumulated at least three Prisoner Litigation Reform Act ("PLRA") strikes. Plaintiff timely filed objections to the Report and Recommendation. (ECF No. 11). The Court finds the matter ripe for consideration.

Under the PLRA's "three strikes" rule, a prisoner is allowed three *in forma pauperis* actions or appeals that are dismissed on grounds of frivolity, maliciousness, or failure to state a claim. 28 U.S.C. § 1915(g). After the prisoner accumulates three PLRA "strikes," *in forma pauperis* status is unavailable to the prisoner unless the prisoner alleges that he is under imminent danger of serious physical injury. *Id.* Without *in forma pauperis* status, the prisoner must pay the filing fee up front for subsequent actions and appeals. *Id.*; *Orr v. Clements*, 688

¹ On May 8, 2017, the Court entered an order dismissing Plaintiff's case without prejudice because Plaintiff failed to exhaust his administrative remedies before filing suit under 42 U.S.C. § 1983. (ECF No. 6).

F.3d 463, 466 (8th Cir. 2012) (holding that an appealing prisoner who has three previous PLRA strikes is ineligible for *in forma pauperis* status and must pay the appellate filing fee up front).

In the instant Report and Recommendation, Judge Bryant finds that Plaintiff has had at least four actions dismissed on three-strikes-applicable grounds,² and that Plaintiff does not allege in this case that he is under imminent danger of serious physical injury. Thus, Judge Bryant recommends that Plaintiff's motion for leave to appeal *in forma pauperis* be denied. Plaintiff's objections are not responsive to the Report and Recommendation, and offer no error of fact or law from which the Court finds it necessary to depart from the Report and Recommendation.³ Therefore, the Court adopts the Report and Recommendation *in toto*. Plaintiff's Motion for Leave to Appeal *In Forma Pauperis* (ECF No. 9) is hereby **DENIED**. Plaintiff must pay the entire appellate filing fee up front in order to proceed with his appeal. Plaintiff also has the option to renew his motion for leave to appeal *in forma pauperis* with the Court of Appeals for the Eighth Circuit. Fed. R. App. P. 24(a).

IT IS SO ORDERED, this 6th day of June, 2017.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge

² The Court agrees with Judge Bryant that Plaintiff has incurred at least three PLRA strikes in this district. *See, e.g., Bausley v. Bender*, No. 2:04-cv-2004-JLH (W.D. Ark. May 25, 2004), ECF No. 11 (dismissing the case as frivolous and for failure to state a claim); *Bausley v. Dugan*, No. 2:03-cv-2288-JLH (W.D. Ark. May 11, 2004), ECF No. 12 (same); *Bausley v. Bass*, No. 2:03-cv-2239-RTD (W.D. Ark. May 10, 2004), ECF No. 10 (same); *Bausley v. Hicks*, No. 2:03-cv-2197-RTD (W.D. Ark. Nov. 14, 2003), ECF No. 8 (same). Thus, the Court finds that Plaintiff is a "three striker" pursuant to the PLRA, and is generally ineligible for *in forma pauperis* status.

³ Plaintiff's objections state that he has already sent in an appeal letter and does not know what else to do to initiate his appeal.